
IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

THE FIRST NATIONAL BANK OF
PORTLAND, OREGON, a Corporation,

Appellant

vs.

E. J. DODGE COMPANY, a Corporation,

Appellee

TRANSCRIPT OF RECORD

On Appeal from the District Court of the United States
for the District of Oregon

Filed

DEC 20 1915

F. D. Monckton,
Clerk.

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*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

THE FIRST NATIONAL BANK OF PORT-
LAND, OREGON, a corporation,
Appellant,

vs.

E. J. DODGE COMPANY, a corporation,
Appellee.

Names and Addresses of the Attorneys of Record.

DOLPH, MALLORY, SIMON & GEARIN, Mohawk
Building, Portland, Oregon, for the Appellant.

F. A. CUTLER, 617 Underwood Building, San
Francisco, California, for the Appellee.

Citation on Appeal.

United States of America,
District of Oregon,—ss.

To E. J. Dodge Company, a corporation created and
existing under and by virtue of the laws of the
State of California, and having its principal
place of business in the City of San Francisco,
Greeting:

Whereas, The First National Bank of Portland,
Oregon, has lately appealed to the United States
Circuit Court of Appeals for the Ninth Circuit
from an order granting an injunction rendered in

the District Court of the United States for the District of Oregon, in your favor, and has given the security required by law; you are, therefore, hereby, cited and admonished to be and appear before said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, to show cause, if any there be, why the said order should not be corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, Oregon, in said District, this 23d day of November, in the year of our Lord, one thousand nine hundred and fifteen.

CHAS. E. WOLVERTON,
Judge.

E. J. DODGE COMPANY, a corporation,
Plaintiff,

vs.

FIRST NATIONAL BANK OF PORTLAND,
Defendant.

I, F. A. Cutler, solicitor for plaintiff, do hereby acknowledge due service upon me of a duly certified copy of the Annexed Citation in the above entitled case, at San Francisco, California, on this 25th day of November, A. D. 1915; and I further acknowledge receipt of duly certified copies of (a) Appeal from Order Allowing Appeal; (b) Order Allowing Appeal; (c) Bond on Appeal; and (d) Assignment

of Errors, in said suit served upon me at the same time and place.

F. A. CUTLER,
Solicitor for Plaintiff.

Filed December 6, 1915. G. H. Marsh, Clerk.

*In the District Court of the United States for the
District of Oregon.*

November Term, 1915.

BE IT REMEMBERED, that on the 17th day of November, 1915, there was duly filed in the District Court of the United States for the District of Oregon, a Bill of Complaint, in words and figures as follows, to wit:

BILL OF COMPLAINT.

*In the District Court of the United States in and
for the District of Oregon.*

E. J. DODGE COMPANY, a corporation created and existing under and by virtue of the laws of the State of California, and having its principal place of business in the City of San Francisco,

Plaintiff,

vs.

THE FIRST NATIONAL BANK OF PORTLAND, OREGON, a corporation organized and existing under and by virtue of the

laws of the United States of America, and having its principal place of business in and located at the City of Portland, in said State of Oregon,

Defendant.

To the Honorable the Judges of the District Court of the United States, in and for the District of Oregon.

E. J. Dodge Company, a corporation organized under and pursuant to the laws of the State of California, and having its principal place of business in the City of San Francisco in said state, brings this its bill of complaint against The First National Bank of Portland, Oregon, a corporation organized and existing under and by virtue of the laws of the United States of America, and having its principal place of business in and located at the City of Portland in said State of Oregon, and thereupon your orator complains and alleges as follows:

I.

That your orator, E. J. Dodge Company, at and during all of the times hereinafter mentioned, was and now is a corporation duly created and existing under and by virtue of the laws of the State of California, having its principal place of business in the City of San Francisco in said state, and is now a citizen and resident of said state.

II.

That the said defendant at and during all the

times hereinafter mentioned, was and now is a national banking corporation duly organized and existing under and by virtue of the laws of the United States of America, having its principal place of business in and located at the City of Portland in said state, and is now a resident and citizen of said State of Oregon.

III.

That your orator, E. J. Dodge Company, was incorporated on the 24th day of September, 1902, under and by virtue of the laws of the State of California, for the purpose, among other things, of erecting, constructing and owning all kinds of structures, buildings, vessels, mills, including lumber mills, mill plants, machinery, and to purchase and own timber lands, and any and all kinds of appliances necessary to operate any and all such mills, plants, machinery and appliances, and to carry on a general lumber and timber manufacturing and dealing business, and ever since has been and now is engaged in such business; that it was incorporated with a capital stock of \$300,000 and the number of shares into which it was and is divided, is 3000 shares, of the par value of \$100 per share, all of which capital stock was and has been actually subscribed, and certificates of stock duly issued therefor.

IV.

That during all of the times herein mentioned, one E. D. Porter was the manager, secretary and

treasurer of said plaintiff and was also a director thereof.

V.

That on or about September 25, 1914, as your orator is informed and believes, said defendant was the owner and possessor of 200 shares of the capital stock of the said plaintiff, and entered into an agreement with said E. D. Porter purporting to represent the said plaintiff, wherein the said defendant was to sell said 200 shares of said stock to said plaintiff for the sum of Forty-one Thousand Dollars, and said plaintiff was to purchase the said stock from said defendant paying therefor the said sum of Forty-one Thousand Dollars; that in carrying out the terms of said agreement and for the purpose of paying the purchase price thereof, the said E. D. Porter caused to be executed in the name of said corporation, certain promissory notes under date of September 25, 1914, at San Francisco, State of California, as follows, to-wit:

1. A promissory note executed by E. J. Dodge Company made payable to the First National Bank of Portland, Oregon, in the sum of \$10,000 payable one year after date with interest payable semi-annually at the rate of five per cent thereon.

2. A promissory note executed by E. J. Dodge Company made payable to the First National Bank of Portland, Oregon, in the sum of \$10,000 payable two years after date

with interest payable semi-annually at the rate of five per cent thereon.

3. A promissory note executed by E. J. Dodge Company made payable to the First National Bank of Portland, Oregon, in the sum of \$10,000 payable three years after date with interest payable semi-annually at the rate of five per cent thereon.

4. A promissory note executed by E. J. Dodge Company made payable to the First National Bank of Portland, Oregon, in the sum of \$11,000 payable four years after date with interest payable semi-annually at the rate of five per cent thereon.

And, thereupon delivered said promissory notes to said defendant, the First National Bank of Portland, Oregon, which ever since has been and now is in possession of said notes claiming to own and hold the same; that the said E. D. Porter, nor the said plaintiff, ever received said shares of stock from the said defendant, and the same were to remain in the possession of said defendant until said promissory notes were fully paid, when the same were thereupon to be delivered to plaintiff.

VI.

That the said E. D. Porter had no right or authority from plaintiff, or otherwise, to make and execute on behalf of plaintiff, said agreement of purchase and sale of said shares of stock with defendant, and had no right or authority to make,

execute and deliver on behalf of and in the name of plaintiff said promissory notes to said defendant, or to make any payments thereon; that the said agreement of purchase and sale of said stock was entered into and said promissory notes executed and delivered by said E. D. Porter on behalf of the said plaintiff, without the knowledge, consent or ratification of the board of directors or any of the stockholders of said plaintiff other than said E. D. Porter; that neither a record of said agreement nor a record of said promissory notes was ever entered in the books of said plaintiff, and the directors and stockholders of said company never acquired any knowledge of the same until on or about the 26th day of October, 1915, when they at once disapproved and disaffirmed the said transaction, and directed that a proper action be commenced to have said agreement of purchase and sale of said stock declared void, and have said promissory notes cancelled and surrendered, and to have a recovery of the money paid thereon.

VII.

Your orator further alleges that the agreement to purchase its own stock by the said plaintiff from the said defendant is illegal and void as in violation of the provisions of Section 309 of the Civil Code of the State of California, prohibiting directors of corporations from reducing the capital stock. The phrase "capital stock" as used in this section, has been construed by the Supreme Court of the State of California to mean not the shares

of which the nominal capital is composed, but the actual capital, i. e., assets with which the corporation carries on its corporate business.

See *Schulte vs. Boulevard Gardens Co.*, 164 Cal. 464, and cases there cited.

And your orator further alleges that said promissory notes purporting to be executed by plaintiff were executed without consideration, and each one is wholly void and of no effect.

VIII.

And your orator further alleges that said 200 shares of stock, the subject of said purchase and sale by and between your orator and said defendant as aforesaid, have been at all the times mentioned in this bill of complaint, and are now in the custody and possession of said defendant, and have never been transferred on the books of said plaintiff to your orator, or to anyone else, and the said plaintiff does hereby relinquish all right, title, claim and interest in and to said 200 shares of stock and consents that the title to and possession of said shares of stock may remain in and with said defendant.

IX.

And your orator further alleges that the said E. D. Porter in carrying out the terms of said agreement, has paid to said defendant from the funds of plaintiff, on account of principal and interest on said promissory notes, the following sums, to-wit:

December	31, 1914.....	\$ 512.50	Interest
March	27, 1915.....	512.50	Interest
July	9, 1915.....	512.50	Interest
October	16, 1915.....	512.50	Interest
October	16, 1915.....	5000.00	Principal

which sums of money belonging to plaintiff, the said E. D. Porter had no right or authority to use in making said payments, and the said defendant has never returned nor repaid the same to plaintiff and now retains the same and is indebted to plaintiff in the full amount thereof, to-wit, the sum of Seven Thousand and Fifty-four Dollars (\$7,054).

X.

That said promissory notes and each of them were and are negotiable in form and each one upon its face purports to have been made by said plaintiff for a valuable consideration, and bears the imprint of the corporate seal of said plaintiff, and nothing shows thereon the purpose or consideration for which said notes or any of them were issued, and as your orator is informed and believes, said defendant intends to and threatens to negotiate, dispose of and transfer to bona fide purchasers for value, said promissory notes if not restrained and prevented therefrom by an order of this court *pendente lite*; that said negotiation, transfer and disposal of said promissory notes by said defendant would cause plaintiff irreparable loss and injury, and irremediable and gross injustice; and your orator is further informed and therefore believes, that the said defendant intends to enforce the collection of

said promissory notes as they become due from said plaintiff, and to that end will commence an action for that purpose against plaintiff in either the State Court of Oregon or the District Court of the United States in and for the District of Oregon, unless restrained and prevented by an order of this Honorable Court.

Forasmuch as your orator can have no adequate relief, except in this court, and to the end, therefore, that the defendant may, if it can, show why your orator should not have the relief hereby prayed, and may make a full disclosure and discovery of all the matters aforesaid, and according to the best and utmost of its knowledge, remembrance, information and belief, full, true, direct and perfect answer make to the matters hereinbefore stated and charged;

And that your Honors may grant a writ of injunction issued out of and under the seal of this Court, perpetually enjoining and restraining the said defendant, its clerks, attorneys, agents and servants from negotiating, transferring or disposing of said promissory notes, and from instituting or prosecuting any action in any State Court or United States Court against plaintiff to enforce the payment of said promissory notes;

And that your Honors may render a decree cancelling and ordering defendant to surrender to plaintiff said promissory notes;

And that your Honors render a decree in favor of plaintiff and against defendant, in the sum of

Seven Thousand Fifty-four Dollars (\$7054).

And your orator further prays that a provisional or preliminary injunction be issued restraining and enjoining the said defendant, its clerks, attorneys, agents and servants from negotiating, transferring or disposing of said or any of said promissory notes, pending this cause, and that a provisional or preliminary injunction be issued restraining the said defendant, its clerks, attorneys, agents and servants from instituting or prosecuting any action in any State or United States Court against plaintiff, for the payment of said or any of said promissory notes, and for such other and further relief as the equity of the case may require, and which to your Honors may seem meet.

May it please your Honors to grant unto your orator, not only a writ of injunction conformable to the prayer of this bill, but also a writ of subpoena of the United States of America, directed to the said defendant, commanding it on a certain day to appear and answer unto this bill of complaint, and to abide and perform such order and decree in the premises as to the Court shall seem proper and required by the principles of equity and good conscience.

F. A. CUTLER,
Solicitor for Complainant.

State of California,
City and County of San Francisco,—ss.

On this 13th day of November, 1915, before me personally appeared H. E. Hunt, general manager of the complainant above named, who being by me duly affirmed, deposes and says, that he is the general manager of the E. J. Dodge Company, and familiar with its business, and that he has read the foregoing bill of complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

H. E. HUNT.

Affirmed and subscribed before me this 13th day of November, 1915.

(Seal)

H. F. ROBSON,

Notary Public in and for the City and County of San Francisco, State of California.

Filed, November 17, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on Wednesday, the 17th day of November, 1915, the same being the 15th Judicial day of the Regular November Term of said Court; Present: the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to wit:

Order to Show Cause and Restraining Order.

In the District Court of the United States in and for the District of Oregon.

No. 6984.

E. J. DODGE COMPANY, a corporation created and existing under and by virtue of the laws of the State of California, and having its principal place of business in the City of San Francisco,

Plaintiff,

vs.

THE FIRST NATIONAL BANK OF PORTLAND, OREGON, a corporation organized and existing under and by virtue of the laws of the United States of America, and having its principal place of business in and located at the City of Portland, in said State of Oregon,

Defendant.

On reading the verified Bill of Complaint in the above entitled action, a copy of which is hereto attached, it is ordered that the said defendant,

First National Bank of Portland, Oregon, show cause, on Saturday, the 20th day of November, 1915, at ten o'clock A. M., or as soon thereafter as counsel can be heard, before the United States District Court for the District of Oregon, at the City of Portland, why the injunction *pendente lite* prayed for in said Bill of Complaint, should not be granted, and it appearing to the court from said verified Bill of Complaint that immediate and irreparable loss or damage will result to the plaintiff before the matter can be heard on notice,

It is further ordered, that in the meantime, the said defendant, its clerks, attorneys, agents and servants, be restrained from doing any of the following acts:

1. Negotiating, transferring or disposing, by endorsement, assignment or otherwise, any of the promissory notes mentioned in said Bill of Complaint herein and more particularly described as follows, to wit:

Four promissory notes executed by the plaintiff in favor of the defendant above named, under date of September 25, 1914, at the City of San Francisco, State of California, as follows:

A promissory note executed by E. J. Dodge Company made payable to the First National Bank of Portland, Oregon, in the sum of \$10,000 payable one year after date with interest payable semi-annually at the rate of five per cent thereon.

A promissory note executed by E. J. Dodge Company made payable to the First National Bank of Portland, Oregon, in the sum of \$10,000 payable two years after date with interest payable semi-annually at the rate of five per cent thereon.

A promissory note executed by E. J. Dodge Company made payable to the First National Bank of Portland, Oregon, in the sum of \$10,000 payable three years after date with interest payable semi-annually at the rate of five per cent thereon.

A promissory note executed by E. J. Dodge Company made payable to the First National Bank of Portland, Oregon, in the sum of \$11,000 payable four years after date with interest payable semi-annually at the rate of five per cent thereon.

2. Instituting or prosecuting any action in any State or United States Court against plaintiff by defendant to enforce the payment of said promissory notes.

CHAS. E. WOLVERTON,
Judge.

Dated: November 17, 1915. Filed, November 17, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on the 20th day of November, 1915, there was duly filed in said court and cause, an Affidavit of E. A. Wyld, in words and figures as follows, to wit:

Affidavit of E. A. Wyld.

*In the District Court of the United States for the
District of Oregon.*

E. J. DODGE COMPANY, a corporation created and existing under and by virtue of the laws of the State of California, and having its principal place of business in the City of San Francisco,

Plaintiff,

vs.

FIRST NATIONAL BANK OF PORTLAND, OREGON, a corporation organized and existing under and by virtue of the laws of the United States of America, and having its principal place of business in and located at the City of Portland, in the State of Oregon,

Defendant.

United States of America,
District of Oregon,—ss.

I, E. A. Wyld, being first duly sworn, say on oath, that I am vice president and cashier of the First National Bank of Portland, defendant in the above entitled suit; that I have read the Bill of Complaint filed in this suit, and the several allega-

tions therein contained; that it is true as alleged in the fifth paragraph of said Bill of Complaint that the defendant was the owner and in possession of two hundred (200) shares of the capital stock of plaintiff corporation on or about September 25, 1914, and that it entered into an agreement with the plaintiff, represented by E. D. Porter, who was the manager, secretary and treasurer of said plaintiff corporation, by the terms of which this defendant was to and did sell to said plaintiff 200 shares of the capital stock of said plaintiff corporation for the sum named in said bill of complaint to be paid for as therein alleged, and that said shares of stock were to be retained by the defendant as collateral security until the promissory notes executed by the plaintiff mentioned in said bill of complaint should be fully paid.

This affiant says it is untrue and he denies that the said E. D. Porter had no right or authority from the plaintiff to make or execute on behalf of the plaintiff the agreement to purchase as aforesaid, and it is also untrue and this affiant denies that the said E. D. Porter had no right or authority to make, execute and deliver on behalf of or in the name of the plaintiff the promissory notes in the bill of complaint described, or to make payments thereon; and this affiant further says that it is untrue and he denies that the promissory notes executed and delivered by the plaintiff through the said E. D. Porter, manager, secretary and treasurer of said corporation, were executed and delivered

ered without the knowledge, consent or ratification of the board of directors or stockholders of the plaintiff other than said E. D. Porter, and he says that it is untrue and denies that no record of said agreement or of said promissory notes was entered in the books of the plaintiff and this affiant denies that the directors or stockholders of the company acquired no knowledge of the same until about the 21st day of October, 1915, at which date it is alleged in the bill of complaint that they disapproved and disaffirmed said transaction and directed that a suit be commenced to have said agreement or purchase and sale of said stock declared void.

This affiant further deposes and says that said plaintiff corporation purchased and acquired said 200 shares of stock in good faith and for full value and acted with full knowledge of all the circumstances surrounding the transaction and said plaintiff corporation deemed it advantageous for it to acquire said stock. That this defendant acquired said stock and obtained title thereto in pursuance of an understanding and agreement had with the plaintiff that it would so acquire and obtain title to said stock and sell the same to the plaintiff, and the sale of said stock by defendant to plaintiff was in pursuance of said agreement and understanding. That the negotiations for the acquisition of said stock by defendant and the subsequent sale thereof to the plaintiff were had with the said E. D. Porter who, as hereinbefore alleged, was the manager, secretary and treasurer of said corporation and a

director therein and acted for said corporation, and who had, as this affiant verily believes, full authority to so act. That attached hereto, marked Exhibit "A," is a copy of the resolution adopted by the board of directors of said plaintiff corporation at a meeting thereof held on September 25, 1914, a certified copy of which resolution will be submitted to this Honorable Court for its inspection.

E. A. WYLD.

Subscribed and sworn to before me this 20th day of November, A. D. 1915.

(Seal)

B. B. McCARTHY,

Notary Public for Oregon. My Commission expires Oct. 29, 1919.

EXHIBIT "A."

At a special meeting of the directors of the E. J. Dodge Company held at the offices of the company, 16 California St., San Francisco, Cal., September 25th, 1914, the following resolution was passed:

"Whereas, it is considered advisable for the E. J. Dodge Company to purchase 200 shares of its capital stock issued to E. H. Dodge, now owned by the First National Bank of Portland, for the sum of \$41,000.00, the secretary is hereby authorized on behalf of this company to issue three promissory notes for \$10,000.00 each, maturing in one, two, and three years respectively, and one promissory note for \$11,000.00 maturing in four years, to the First National Bank of Portland, Ore., in full payment of this stock."

(Signed) E. D. PORTER,
Secretary.

I hereby certify the above to be a true and correct copy of resolution passed at meeting above stated.

(Signed) E. D. PORTER,
Secretary.

Filed, November 20, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on Saturday, the 20th day of November, 1915, the same being the 18th Judicial day of the Regular November Term of said Court; Present: the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

Order for Preliminary Injunction.

In the District Court of the United States in and for the District of Oregon.

E. J. DODGE COMPANY, a corporation created and existing under and by virtue of the laws of the State of California, and having its principal place of business in the City of San Francisco,

Plaintiff,

vs.

THE FIRST NATIONAL BANK OF PORTLAND, OREGON, a corporation organized and existing under and by virtue of the laws of the United States of America, and having its principal place of business in and located at the City of Portland, in said State of Oregon,

Defendant.

The application of plaintiff for a Preliminary Injunction *pendente lite* in the above entitled action coming on regularly to be heard by the Court on this day, due notice of the time and place of such hearing having been given to defendant as provided for

by rule 73 of Rules of Practice for the Courts of Equity of the United States, F. A. Cutler, Esq., appearing for the plaintiff, and Joseph Simon, Esq., appearing for the defendant, and the matter having been submitted to the Court for its decision upon the verified bill of complaint of plaintiff herein, and the affidavit of E. A. Wyld on behalf of the defendant, and the argument of counsel, and the Court being fully advised in the premises, and it appearing to the Court to be a proper case for a preliminary injunction *pendente lite* to be issued as asked for by plaintiff;

It is hereby ordered that a preliminary injunction be issued under the seal of this Court commanding and enjoining defendant, its solicitors, attorneys, agents and servants to desist and refrain from doing any of the following acts during the pendency of said action, and until further order of the Court, viz:

1. Negotiating, transferring or disposing, by endorsement, assignment or otherwise, any of the promissory notes mentioned in said bill of complaint herein and more particularly described as follows, to wit:

Four promissory notes executed by the plaintiff in favor of the defendant above named, under date of September 25, 1914, at the City of San Francisco, State of California, as follows:

A promissory note executed by E. J. Dodge Company made payable to the First National Bank of Portland, Oregon, in the sum of

\$10,000 payable one year after date with interest payable semi-annually at the rate of five per cent thereon.

A promissory note executed by E. J. Dodge Company made payable to the First National Bank of Portland, Oregon, in the sum of \$10,000 payable two years after date with interest payable semi-annually at the rate of five per cent thereon.

A promissory note executed by E. J. Dodge Company made payable to the First National Bank of Portland, Oregon, in the sum of \$10,000 payable three years after date with interest payable semi-annually at the rate of five per cent thereon.

A promissory note executed by E. J. Dodge Company made payable to the First National Bank of Portland, Oregon, in the sum of \$11,000 payable four years after date with interest payable semi-annually at the rate of five per cent thereon.

2. Instituting or prosecuting any action in any State or United States Court against plaintiff by defendant to enforce the payment of said promissory notes.

This order to become effective upon filing a bond with good and sufficient security in the sum of \$10,000 to pay all costs and damages accruing to defendant by reason of the injunction, if the same be wrongful or without sufficient cause.

CHAS. E. WOLVERTON,
Judge.

Dated November 20, 1915. Filed November 20, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on the 22nd day of November, 1915, there was filed in said court and cause, a Bond for Preliminary Injunction, in words and figures as follows, to wit:

Bond for Preliminary Injunction.

*In the District Court of the United States for the
District of Oregon.*

E. J. DODGE COMPANY, a corporation created and existing under and by virtue of the laws of the State of California, and having its principal place of business in the City of San Francisco,

Plaintiff,

vs.

THE FIRST NATIONAL BANK OF PORTLAND, OREGON, a corporation organized and existing under and by virtue of the laws of the United States of America, and having its principal place of business in and located at the City of Portland, in said State of Oregon,

Defendant.

Whereas, the plaintiff in the above entitled suit has applied to the Court for a preliminary injunction *pendente lite* enjoining and restraining the defendant from doing certain acts fully described in the bill of complaint herein, and

Whereas, the Court has made an order of this date granting the motion of the plaintiff for the issuance of a preliminary injunction *pendente lite*

herein and ordering that said preliminary injunction issue on condition that the plaintiff give to the defendant an undertaking in the sum of Ten Thousand Dollars (\$10,000) to the effect that it will pay all costs and disbursements that may be decreed to the defendant and such damages, not exceeding such amount, as defendant may sustain by reason of the injunction if the same be wrongful or without sufficient cause;

Now therefore, the New Amsterdam Casualty Company, a corporation organized and existing under and by virtue of the laws of the State of New York, does hereby undertake with the defendant in the sum of Ten Thousand Dollars (\$10,000), that it will pay all costs and disbursements that may be decreed to the defendant in the above entitled action, and such damages, not exceeding said sum of \$10,000.00 as it may sustain by reason of the injunction if the same be wrongful or without sufficient cause.

Signed, sealed and delivered this 20th day of November, 1915.

NEW AMSTERDAM CASUALTY COMPANY,
(Seal)

E. L. ENSIGN,
Attorney in Fact.

Examined and approved this 22d day of November, 1915.

CHAS. E. WOLVERTON,
Judge.

Filed, November 22, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on the 22nd day of November, 1915, there was issued out of said court and cause a Preliminary Injunction, in words and figures, as follows, to wit:

Preliminary Injunction.

*In the District Court of the United States for the
District of Oregon.*

E. J. DODGE COMPANY, a corporation created and existing under and by virtue of the laws of the State of California, and having its principal place of business in the City of San Francisco,

Plaintiff,

vs.

THE FIRST NATIONAL BANK OF PORTLAND, OREGON, a corporation organized and existing under and by virtue of the laws of the United States of America, and having its principal place of business in and located at the City of Portland, in said State of Oregon,

Defendant.

The President of the United States of America, to
The First National Bank of the City of Portland, Oregon, your solicitors, attorneys, agents and servants, Greeting:

Whereas, on the 20th day of November, 1915, an order was made by the Honorable Chas. E. Wolverton, Judge of the said District Court of Oregon,

commanding and enjoining you, your solicitors, attorneys, servants and agents to desist and refrain from doing certain acts in said order and hereinafter more particularly mentioned, during the pendency of said action and until the further order of said Court,

Therefore this is to command you, said defendant, your solicitors, attorneys, servants and agents during the pendency of the above entitled action and until the further order of said Court, to absolutely desist and refrain from :

1. Negotiating, transferring or disposing, by endorsement, assignment or otherwise, any of the promissory notes mentioned in said bill of complaint herein and more particularly described as follows, to wit :

Four promissory notes executed by the plaintiff in favor of the defendant above named, under date of September 25, 1914, at the City of San Francisco, State of California, as follows :

A promissory note executed by E. J. Dodge Company made payable to the First National Bank of Portland, Oregon, in the sum of \$10,000 payable one year after date with interest payable semi-annually at the rate of five per cent thereon.

A promissory note executed by E. J. Dodge Company made payable to the First National Bank of Portland, Oregon, in the sum of \$10,000 payable two years after date with interest payable semi-annually at the rate of five

per cent thereon.

A promissory note executed by E. J. Dodge Company made payable to the First National Bank of Portland, Oregon, in the sum of \$10,000 payable three years after date with interest payable semi-annually at the rate of five per cent thereon.

A promissory note executed by E. J. Dodge Company made payable to the First National Bank of Portland, Oregon, in the sum of \$11,000 payable four years after date with interest payable semi-annually at the rate of five per cent thereon.

2. Instituting or prosecuting any action in any State or United States Court against plaintiff by defendant to enforce the payment of said promissory notes.

Witness the Honorable CHAS. E. WOLVERTON, Judge of the District Court of the United State in and for the District of Oregon, and the Seal of said Court, this 22d day of November, 1915.

(Seal)

G. H. MARSH,

Clerk.

RETURN ON SERVICE OF WRIT.

United States of America,
District of Oregon,—ss.

I hereby certify and return that I served the annexed Preliminary Injunction on the therein-named The First National Bank of Portland, Oregon, by handing to and leaving a true and correct copy thereof with C. F. Adams as Vice President of said First National Bank, Portland, Oregon, personally at Portland in said District on the 22nd day of November, A. D. 1915.

JOHN MONTAG,
U. S. Marshal.

By Tinnies DeBoest,
Deputy.

Returned and filed November 22, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on the 23rd day of November, 1915, there was duly filed in said court and cause, a Petition for Appeal, in words and figures as follows, to wit:

Petition for Appeal.

*In the District Court of the United States for the
District of Oregon.*

IN EQUITY—No. 6984.

E. J. DODGE COMPANY, a corporation created and existing under and by virtue of the laws of the State of California, and having its principal place of business in the

City of San Francisco,

Plaintiff,

vs.

THE FIRST NATIONAL BANK OF PORTLAND, OREGON, a corporation, organized and existing under and by virtue of the laws of the United States of America, and having its principal place of business in and located at the City of Portland, in the State of Oregon,

Defendant.

The above named defendant, The First National Bank of Portland, conceiving itself aggrieved by the order entered on November 20th, 1915, in the above entitled cause, wherein said District Court of the United States for the District of Oregon, ordered and adjudged that a preliminary injunction issue under the seal of said Court demanding and enjoining the defendants, its solicitors, attorneys, agents and servants to desist and refrain from negotiating, transferring or disposing by endorsement, assignment or otherwise, any of the promissory notes mentioned in the bill of complaint in said order particularly described, and enjoining said defendant from instituting or prosecuting any action to enforce payment of said promissory notes, doth hereby appeal from said order to the United States Court of Appeals for the Ninth Circuit, and it prays that this its appeal may be allowed and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the said United

States Circuit Court of Appeals for the Ninth Circuit.

DOLPH, MALLORY, SIMON & GEARIN,
Solicitors for the Defendant and Appellant,
The First National Bank of Portland.

And now, to wit, on November 23, 1915, it is ordered that an appeal be allowed as prayed for.

CHAS. E. WOLVERTON,
Judge.

Copy of the within Petition for Appeal, together with Copy of Assignment of Errors, Order Allowing Appeal, and Bond on Appeal deposited in my office for service on attorney for plaintiff under Rule 9 of the Rules of this Court.

G. H. MARSH,
Clerk.

Filed November 23, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on the 23rd day of November, 1915, there was duly filed in said court and cause, an Assignment of Errors, in words and figures as follows, to wit:

Assignment of Errors.

*In the District Court of the United States for the
District of Oregon.*

IN EQUITY—No. 6984.

E. J. DODGE COMPANY, a corporation created and existing under and by virtue of the laws of the State of California, and having its principal place of business in the City of San Francisco,

Plaintiff,

vs.

THE FIRST NATIONAL BANK OF PORTLAND, OREGON, a corporation, organized and existing under and by virtue of the laws of the United States of America, and having its principal place of business in and located at the City of Portland, in the State of Oregon,

Defendant.

Assignment of Errors.

And now, on the 23rd day of November, A. D. 1915, came the said defendant, The First National Bank of Portland, by its solicitors, and says that the order directing and allowing the issuance of a writ of injunction in said cause and restraining

the defendant from negotiating, transferring or disposing by endorsement, assignment or otherwise of the promissory notes described in the bill of complaint and enjoining said defendant from instituting or prosecuting any action to enforce payment of said promissory notes, is erroneous and against the just rights of said defendant, for the following reasons:

First. Because it appears from the face of the bill of complaint that there is no sufficient cause shown why an injunction should issue in this cause;

Second. Because the evidence submitted upon the application for an injunction showed that plaintiff was not entitled to the relief prayed for in its bill of complaint, nor to the granting of the preliminary injunction applied for; and plaintiff's conduct estopped it from any such relief;

Third. No sufficient showing has been made to justify the granting of an injunction in this cause;

Wherefore, the said defendant prays that the said order of the District Court directing the issuance of the writ of injunction be reversed and that said Court may be directed to set aside and annul said order granting an injunction.

DOLPH, MALLORY, SIMON & GEARIN,
Solicitors for the Defendant and Appellant,

First National Bank of Portland.

Filed November 23, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on Tuesday, the 23rd day of November, 1915, the same being the 20th Judicial day of the Regular November Term of said Court; Present: the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to wit:

Order Allowing Appeal.

In the District Court of the United States for the District of Oregon.

IN EQUITY—No. 6984.

E. J. DODGE COMPANY, a corporation created and existing under and by virtue of the laws of the State of California, and having its principal place of business in the City of San Francisco,

Plaintiff,

vs.

THE FIRST NATIONAL BANK OF PORTLAND, OREGON, a corporation, organized and existing under and by virtue of the laws of the United States of America, and having its principal place of business in and located at the City of Portland, in the State of Oregon,

Defendant.

On this 23d day of November, A. D. 1915, came the defendant in the above entitled suit, by its solicitors, and filed herein and presented to the Court its petition praying for an appeal from the

order made and entered in this cause on November 20th, 1915, directing the issuance of a writ of injunction as prayed for in the bill of complaint and praying that a transcript of the record and proceedings and papers upon which the order herein was made, duly authenticated, may be sent to the United States Circuit Court of Appeals, for the Ninth Judicial Circuit, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof the Court does allow said appeal upon the defendant giving bond according to law in the sum of Two Hundred and Fifty Dollars.

CHAS. E. WOLVERTON,

Judge.

Filed November 23, 1915. G. H. Marsh, Clerk. And afterwards, to wit, on the 23rd day of November, 1915, there was duly filed in said court and cause, a Bond for Costs on Appeal, in words and figures as follows, to wit:

Bond on Appeal.

In the District Court of the United States for the District of Oregon.

IN EQUITY—No. 6984.

E. J. DODGE COMPANY, a corporation created and existing under and by virtue of the laws of the State of California, and having its principal place of business in the City of San Francisco,

Plaintiff,

vs.

THE FIRST NATIONAL BANK OF PORTLAND, OREGON, a corporation, organized and existing under and by virtue of the laws of the United States of America, and having its principal place of business in and located at the City of Portland, in the State of Oregon,

Defendant.

Know All Men By These Presents, That we, the First National Bank of Portland, as Principal, and A. L. Mills and C. F. Adams, of Portland, Oregon, as Sureties, are held and firmly bound unto the above named E. J. Dodge Company, corporation, plaintiff, in the sum of Two Hundred and Fifty Dollars (\$250.00) to be paid to the said E. J. Dodge Company, for the payment of which well and truly to be made we bind ourselves, and our and each of our heirs, administrators, and executors, jointly and severally, by these presents.

Sealed with our seals and dated the 23d day of November, A. D. 1915.

Whereas, the above named defendant, First National Bank of Portland, has prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the order made and rendered in the above entitled suit directing issuance of a preliminary injunction in said cause by the District Court of the United States for the District of Oregon,

Now, therefore, the condition of this obligation is such that if the First National Bank of Portland shall prosecute said appeal to effect and answer all damages and costs if it fail to make such appeal good, then this obligation shall be void; otherwise

the same shall remain in full force and virtue.

FIRST NATIONAL BANK OF PORTLAND,

By A. L. MILLS, President.

A. L. MILLS,

C. F. ADAMS.

Sealed and delivered in presence of
Joseph Simon.

Approved by Chas. E. Wolverton, Judge.

Filed, November 23, 1915. G. H. Marsh, Clerk.

United States of America,

District of Oregon,—ss.

I, G. H. Marsh, Clerk of the District Court of the United States, for the District of Oregon, do hereby certify that I have prepared the foregoing transcript of record on appeal from the order of said court granting a preliminary injunction in the case in which the First National Bank of Portland, Oregon, is appellant, and the E. J. Dodge Company, a corporation, is appellee, in accordance with the rules of the court, and that said transcript is a full, true, and correct transcript of the records of the proceedings had in said court in said cause as the same appear of record and filed in my office and in my custody.

And I further certify that the cost of said transcript is \$..... for clerk's fees for preparing said transcript, and \$..... for printing the same, and that said costs have been paid by said appellant.

.....
Clerk.